

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,)	
)	Civil Action No. 05-10917 PBS
Plaintiff,)	
)	
v.)	
)	
J.T. POSEY COMPANY,)	
)	
Defendant.)	
)	

**MOTION OF DEFENDANT J.T. POSEY COMPANY TO DISMISS
PLAINTIFF THE HIPSAVER COMPANY, INC.'S COMPLAINT UNDER
FED. R. CIV. P. RULE 12(b)(6)
OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT UNDER
FED. R. CIV. P. RULE 56**

Defendant J.T. Posey Company ("Posey") moves this Court for an Order dismissing all counts of Plaintiff The HipSaver Company Inc.'s ("HipSaver") complaint pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 12(b)(6), on the grounds that:

1. As to all counts, HipSaver has failed to plead all of the required elements of each claim; and
2. As to Count II and Count III, HipSaver has failed to plead fraud with particularity as required by FRCP Rule 9(b).

In the alternative, Posey moves this Court for an Order granting summary judgment under FRCP Rule 56 in favor of Posey because Counts I, II, and III are barred

as a matter of law by the terms of a settlement agreement entered into by the parties in connection with a prior action.

This Motion will be based upon this Notice, the attached Memorandum in Support of this Motion, and all pleadings, exhibits, declarations, and records on file herein and upon such additional argument and evidence as may be presented to the Court at the time of a hearing.

The undersigned counsel for Posey hereby certifies that he has attempted to confer with HipSaver's counsel and attempted in good faith to resolve or narrow the issues raised by this motion.

This motion should be considered only if the companion motion of Posey to transfer this action to the Central District of California is denied.

Dated: June 17, 2005

J.T. POSEY COMPANY

By its attorneys,

/s/ Douglas H. Morseburg

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